of a deposit of a note or check for discount. The bank gets the legal title by the indorsement.[6] From first to last the results are founded on the proposition that by indorsement of the paper the legal title passes. This has nothing to do with the amount of other funds of the depositor held by the depositary. Whether the latter is a *bona fide* purchaser is therefore not a question of legal title, but of consideration. And an examination of the cases discussed in the principal article will show that the latter is the real bone of contention.[7]

The giving of credit to the depositor in such a case is really a promise by the bank to pay out money to him at his call. It is supported by good consideration, namely, the receipt of the title to the paper, and seems to be part of a valid contract. It is difficult to see why one who has thus become bound to do a thing has not given value as much as one who has actually done something.[8] The courts, however, do not generally take this view, and the majority are therefore inclined to hold that the depositary bank is not a *bona fide* purchaser unless it gives some consideration other than a mere credit to the amount of the proceeds of the paper.[9]

THE PREFERENCE GIVEN TO THE LEGAL ESTATE OVER THE EQUITABLE. — Probably no rule of law which has to deal with cases where one of two innocent parties must inevitably suffer can hope to give entire satisfaction. In a recent article Mr. Edward Jenks criticizes the rule that a conveyance of the legal title to a purchaser for value without notice cuts off prior equities. *The Legal Estate*, 24 L Quar. Rev. 147 (April, 1908). The doctrine criticized is established by authority,[1] and the article amounts to a suggestion that the law should be changed.

The author regards this rule as an instance of undue preference for the legal estate over the equitable. He mentions other instances, such as the refusal of courts to allow the equitable owner the right to possession, and the differences in form between conveyances of legal estates and conveyances of equitable. The author also maintains that the doctrine of tacking is another unfortunate result of such preference, and goes on to show that historical reasons, such as the requirement of public services and other burdens from the one seised, and the notoriety of transfers by seisin, which justified this preference originally, no longer exist.

If a trustee in breach of trust conveys the *res* to a purchaser for value without notice, the purchaser is protected; but if the trustee merely contracts to convey the *res* to such purchaser, the *cestui* is protected. Mr. Jenks thinks the accident of the purchaser's having acquired the legal title turns the decision without affecting the merits and therefore that the prefer-

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[6] Burton *v.* United States, 196 U. S. 283; Cragie *v.* Hadley, 99 N. Y. 131.

[7] See Dykman *v.* Northbridge, 80 Hun (N. Y.) 258; City Deposit Bank *v.* Green, 130 Ia. 384; Lancaster Nat'l Bank *v.* Huver, 114 Pa. 216.

[8] Parker *v.* Crittenden, 37 Conn. 148. This principle has been applied to promises of marriage. Smith *v.* Allen, 5 Allen (Mass.) 454; and to a few other transactions. Ex Parte Golding, 13 Ch. D. 628; West *v.* Williams, [1898] 1 Ch. 488. *Contra*, Eversdon *v.* Mayhew, 65 Cal. 163; Dean *v.* Anderson, 34 N. J. Eq. 496.

[9] Central Nat'l Bank *v.* Valentine, 18 Hun (N. Y.) 417; Albany County Bank *v.* People's Ice Co., 92 N. Y. App. Div. 47, 55; Manufacturer's Nat'l Bank *v.* Newell, 71 Wis. 309; Citizens' State Bank *v.* Cowles, 180 N. Y. 346.

[1] Lea *v.* Copper Co., 21 How. (U. S.) 493.

ence for the legal estate is purely arbitrary. In reality it is founded on a different and quite fundamental principle, namely, that equity will take nothing from an innocent purchaser for value.[2] And this, it seems, should apply to equitable interests, as well as to legal.[3] In the cases referred to, where the trustee has committed a breach of trust, and the purchaser has acquired the legal title, the court must decide whether it shall take from him something acquired for value and in good faith; but if he has not acquired the title, the court must decide whether it shall help him to get it, when that can be done only by ordering the trustee to commit a further wrong. These questions are hardly so similar that a distinction made between them can be called arbitrary. Moreover it is doubtful whether the situation would be improved by the adoption of Mr. Jenks' suggestion, that the *cestui* bear the loss in every case, or that the loss be divided equally between him and the purchaser. It would not be just for the *cestui* to bear the loss in all these cases indiscriminately. It is true the trustee is the apparent owner, and one who acquires title from him for value without notice should be protected against the *cestui*. But one who pays the trustee without getting title stands in no better position than the *cestui*. In fact his position is worse, because, unless he gets the legal title he gets nothing, for the equitable interest is in the *cestui*, and the trustee cannot convey it away. It follows that the author's suggestion that the loss be borne equally by the *cestui* and the purchaser would in every case be unjust to one or the other. The present rule seems as just as circumstances permit, and is likely to stand.

ARREST OF HIS PRINCIPAL BY THE BAIL. *Anon.* Arguing that such arrest may be made in a state other than where the bond is given, and the bail may transfer him without infringing his constitutional rights. 67 Cent. L. J. 1.

BRITISH SOCIALIST LABOR PARTY, THE. *Edward Porritt.* A study of the party's methods, and its increasing power. 23 Pol. Sci. Quar. 468.

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CONFLICT OF CONTROL OF CORPORATIONS. *Anon.* Arguing against centralization of the control of corporations in Canada. 44 Can. L. J. 249.

CONSTITUTIONALITY OF THE PROPOSED INTERNATIONAL PRIZE COURT — CONSIDERED FROM THE STANDPOINT OF THE UNITED STATES. *Thos. Raeburn White.* Discussing the possible removal by appeal of cases from the United States Courts to the Prize Court. 2 Am. J. of Int. L. 490.

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[2] See Colyer *v.* Finch, 5 H. L. Cas. 905, 920.

[3] See 1 HARV. L. REV. 1.

ECONOMICS FROM A LEGAL STANDPOINT. *H. W. Humble.* 42 Am. L. Rev. 379.

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HAGUE CONVENTION RESPECTING THE RIGHTS AND DUTIES OF NEUTRAL POWERS IN NAVAL WAR. *Charles Cheney Hyde.* 2 Am. J. of Int. L. 507.

HOW THE STATES HAVE FARED DURING THE LAST DECADE IN THE SUPREME COURT OF THE UNITED STATES. *C. H. Alexander.* Showing that the court has prevented encroachment by Congress on state affairs. 41 Chi. Leg. N. 41.

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IS IT USURPATION TO HOLD AS VOID UNCONSTITUTIONAL LAWS? *William G. Hastings.* 20 Green Bag 456.

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LIABILITY OF BANK COLLECTING COMMERCIAL PAPER. *George I. Woolley.* 12 Bench and Bar 100.

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MODERN LAW OF EVIDENCE AND ITS PURPOSE. *Charles Frederic Chamberlayne.* 42 Am. L. Rev. 757.

NEEDS OF THE RAILROADS, THE. *Logan G. McPherson.* 23 Pol. Sci. Quar. 440.

NOTABLE DECISION, A. *Clarence R. Martin.* Supporting a recent Indiana decision which held that a court will consider the constitutionality of a statute though it is not questioned by parties and that a statute applying only to counties of a given population is unconstitutional. 42 Am. L. Rev. 641.

ORIGIN AND USE OF INJUNCTIONS, THE. *Frederick Dwight.* 31 N. J. L. J. 261.

POWER OF A STATE TO RESTRICT THE RIGHT OF A FOREIGN CORPORATION TO REMOVE CASES TO THE UNITED STATES COURTS. *W. P. Dillard.* 40 Chi. Leg. N., 316, 323, 330.

PRESIDENT'S ADDRESS, THE. (American Bar Association, 1908.) *Jacob M. Dickinson.* 20 Green Bag 483.

PROPOSED INTERNATIONAL PRIZE COURT AND SOME OF ITS DIFFICULTIES. *Charles Noble Gregory.* Showing how difficulties would arise from the fact that different nations have different laws. 2 Am. J. of Int. L. 458.

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RECENT LEGISLATION AND CONSTITUTIONAL DECISIONS IN ILLINOIS. *James M. Matheny.* 3 Ill. L. Rev. 131.

RECONSTRUCTION OF COMPANIES, THE. *Anon.* A discussion of recent decisions under the English Companies Act. 52 Sol. J. 478.

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RIGHTS OF ALIENS: A STUDY IN TREATY MAKING. *Edwin Maxey.* An account of the discussions at a Latin-American conference, and conclusions based thereon. 16 Am. Lawyer 171.

RIGHTS OF SECOND MORTGAGEES REGARDING POSSESSION. *R. M. P. Willoughby.* Suggesting the advisability of providing that the second mortgagee shall have right to take possession under certain circumstances. 24 L. Quar. Rev. 297.

SALVAGE AWARDS. *A. R. Kennedy.* A statement of English law on the subject. 33 L. Mag. & Rev. 301.

STRIKING OUT SHAM DEFENSES. *George I. Woolley.* Stating the law on the subject in New York. 13 Bench and Bar 57.

TAXATION OF INHERITANCES, THE. *Joseph F. M'Cloy.* A consideration of the legislation recommended by President Roosevelt. 40 Chi. Leg. N. 347; 53 Oh. L. Bul. 159.

VALIDITY OF A STATUTE PROVIDING THAT ACCEPTANCE FROM RELIEF ASSOCIATION SHALL BE NO BAR TO AN ACTION FOR DAMAGES. *F. A. Beecher.* 67 Cent. L. J. 143.

WHEN IS A BANK THE *bona fide* OWNER OF A CHECK LEFT FOR DEPOSIT OR COLLECTION? *Albert S. Bolles.* 56 U. P. L. Rev. 375. See *supra.*

II. BOOK REVIEWS.

INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR. By Sakuyé Takahashi. American Edition. New York: The Banks Law Publishing Company. 1908. pp. xviii, 805. 8vo.

Professor Takahashi was legal adviser to the commander-in-chief of the Japanese fleet during the Chino-Japanese war, and in 1899 prepared a book on the "Cases on International Law during the Chino-Japanese War." He was a member of the legal committee in the Department for Foreign Affairs during the Russo-Japanese war. This experience especially qualified him to set forth the Japanese view upon the international questions which arose in these wars. During the Chino-Japanese war the Japanese endeavored to observe scrupulously the rules of international law, as they were desirous of full recognition in the family of nations, and anxious at that critical period to show the justice of their claim to such recognition. The Russo-Japanese war coming between the First Hague Conference of 1899 and the Second Hague Conference of 1907 furnished illustrations of the application of the rules of the Conference of 1899, and problems for the consideration of the Conference of 1907. Professor Takahashi's book referring to the conventions of both Conferences shows the rapid development of international law within this brief period.

Many matters which were unsettled at the time of the Chino-Japanese war in 1894 were settled by the Hague Conventions of 1899, and many matters still unsettled at the time of the Russo-Japanese war of 1904 were determined by the Hague Conventions of 1907. An example of this is fully set forth in Part I, "The Outbreak of War, and its Effects." The Russo-Japanese war had begun without a declaration, as had many other wars within the last two hundred years. The Russo-Japanese incident led to much discussion. The Second Hague Conference provided for declaration before the opening of hostilities. Other matters emphasized as unsettled at the outbreak of the Russo-Japanese war, such as the granting of days of grace to enemy merchant vessels at the outbreak of hostilities, and the treatment of belligerent vessels in neutral ports, received attention at The Hague in 1907.

Part II deals with "Laws and Customs of Land Warfare." This section of the book is of the nature of a description of the conduct of the Russo-Japanese hostilities on land as illustrative of the modern development of international law. Part II may profitably be read with Professor Ariga's "La Guerre Russo-Japonaise au point de vue continental et le droit international," issued in 1908.

Parts III, IV, and V, constituting about 500 of the 800 pages of Professor Takahashi's book, are most valuable contributions to the data of international law. Part III deals with "Laws of Naval Warfare." Part IV deals with